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much might be said for making such jurisdiction exclusive. But even in cases where no accounts are involved, so that the parties must necessarily resort to a court of law for relief, they should not be heard to complain if the court, weighing the inadequacy of the machinery of law courts and the necessity of giving time to other litigation against the desire to comply with the wishes of the litigants in a particular case, sees fit to refer the case to an auditor for a preliminary hearing.<sup>27</sup>

## RECENT CASES

**BANKRUPTCY — PREFERENCES — FULFILMENT OF CONTRACT WITH PURCHASER WHO HAS PAID IN ADVANCE.** — The plaintiff contracted with the owner of a mill for the entire output of his mill for one year, and paid part of the price in advance. Six months later the owner was adjudicated a bankrupt. The value of the mill's output up to that time was less than the money already advanced by the plaintiff. The lower court ordered the trustee in bankruptcy to continue the contract, which was done. Later, the court ordered the plaintiff to pay again to the trustee the price already advanced to the bankrupt before the bankruptcy. *Held*, that this was error. *Grief Bros. v. Mullinix*, 45 A. B. R. 265.

For a discussion of the principles involved in this case, see NOTES, p. 309, *supra*.

**BILLS OF LADING — EFFECT OF INTERSTATE COMMERCE ACTS UPON VALIDITY OF EXCHANGE BILL OF LADING ISSUED WITHOUT SURRENDER OF ORIGINAL.** — The plaintiff is the *bona fide* purchaser of an exchange bill of lading issued by the defendant railroad without requiring the surrender of the original bill. The Interstate Commerce Acts, as amended, make it "unlawful for any carrier to give any undue or unreasonable preference or advantage to any particular person" and require every carrier to file with the Commission schedules showing "all privileges or facilities granted and any rules or regulations which in any wise affect rates or the value of service rendered." (24 STAT. AT L. 380, 34 STAT. AT L. 586.) The defendant had filed a regulation which provided that original bills of lading must be surrendered before exchange bills would be issued. The plaintiff sues the railroad for failure to deliver shipment. *Held*, that the plaintiff cannot recover. *Pioneer Trust Co. v. Nashville, C. & St. L. R. R. Co.*, 224 S. W. 109 (Mo.).

Whether an exchange bill of lading be issued without a surrender of the original or an original bill of lading be issued without receipt of the goods, a bill of lading is outstanding without any goods behind it. By the weight of authority at common law, a *bona fide* purchaser of such a bill of lading could not recover upon it from the carrier. *Grant v. Norway*, 10 C. B. 665. *Pollard v. Vinton*, 105 U. S. 7. See *Mo., etc. R. Co. v. Hutchings Co.*, 78 Kan. 758, 764, 767, 99 Pac. 230, 232, 233. But the better rule protected the *bona fide* purchaser of the bill of lading. See WILLISTON, SALES, § 419. The Uniform Bill of Lading Act adopts this rule. See DRAFT ACT COM'RS UNIFORM STATE LAWS,

he so desired, could have enjoined the suit at law and forced the plaintiff to resort to equity for relief. *Ibid.*, 243. In such case the federal court, sitting as a court of equity, could have made a compulsory reference for decision. See *United States v. Wells, supra*, 151.

<sup>27</sup> See *Fenno v. Primrose, supra*, 806. In England compulsory reference for preliminary hearing is authorized by the Arbitration Act of 1889. See 52 & 53 VICT., c. 49, § 13.

**BILLS OF LADING, § 23.** This case is interesting as treating the problem as within the scope of the Acts to regulate commerce. The court seems wrong in assuming that any deviation from the filed and published regulations violates the act. Only "undue or unreasonable" preferences are prohibited. *Gamble-Robinson Commission Co. v. Chicago Ry. Co.*, 168 Fed. 161. *United States v. B. & O. R. R. Co.*, 154 Fed. 108. But where the act is violated the contract is invalid and unenforceable. *Chicago & Allon R. Co. v. Kirby*, 225 U. S. 155. *Saila & Jones v. Pa. R. Co.*, 109 Misc. 604, 179 N. Y. Supp. 471. Although this situation falls within the general operation of the Interstate Commerce Acts, it is specifically covered by the Pomerene Bill of Lading Act. See 39 STAT. AT L. 542. And it is to be hoped that in the future the obvious purpose of § 23 of the Uniform Act will be given effect in interstate transactions in spite of the inartistic changes in wording (intentionally or accidentally) made by the Pomerene enactment. If not thereby protected, the *bona fide* purchaser's best chance seems to be an action in tort for deceit. *Cf.* William Vance, "Liability for Unauthorized Torts of Agents," 4 MICH. L. REV. 199.

**BOUNDARIES — INCONSISTENT DESCRIPTIONS — WHEN COURSES AND DISTANCES GOVERN MONUMENTS.** — A patent was issued for 12,000 acres of land, the boundaries of which were described in part by monuments and in part by courses and distances. The monuments conflicted with the courses and distances and the acreage called for by the patent, and, if followed, would lead to a palpably wrong result. *Held*, that the courses and distances will govern. *Swift Coal & Timber Co. v. Sturgill*, 223 S. W. 1090 (Ky.).

The description in the deed is intended to identify the tract conveyed. And so, if the description is insufficient for identification, the conveyance is void. *Wilson v. Johnson*, 145 Ind. 40, 43 N. E. 930; *McBride v. Steinveden*, 72 Kan. 508, 83 Pac. 822. The controlling element is the intention of the parties inferred from the language of the deed. *Reed v. Proprietors of Locks and Canals*, 8 How. (U. S.) 274; *Bruensmann v. Carroll*, 52 Mo. 313. Certain rules of presumption aid in determining their intention when the elements of description conflict. Monuments ordinarily govern courses and distances. *Pernam v. Wead*, 6 Mass. 131; *Watkins v. King*, 118 Fed. 524. But the rule yields when it appears that the courses and distances are more reliable. *White v. Luning*, 93 U. S. 514; *So. Realty Co. v. Keenan*, 99 S. C. 200, 83 S. E. 39. So courses and distances normally govern recitals of area. *Sherwin v. Bitzer*, 97 Minn. 252, 106 N. W. 1046. See *Christian v. Bulbeck*, 120 Va. 74, 113, 90 S. E. 661, 673. But in extreme cases provisions as to area may control all. *Davis v. Hess*, 103 Mo. 31, 15 S. W. 324; *McDowell v. Carothers*, 75 Ore. 126, 146 Pac. 800. There is no rule of preference between conflicting courses and distances. *Preston's Heirs v. Bowmar*, 6 Wheat. (U. S.) 580; *Green v. Pennington*, 105 Va. 801, 54 S. E. 877. But *cf.* *Paschal v. Sweptson*, 120 Ark. 230, 235, 179 S. W. 339, 340. In this case, if the monuments were followed, the description would not conform in appearance to the plat nor even approximate the acreage called for in the patent, while, if the courses and distances were followed, the description would conform to the plat and include the specified quantity. It seems a proper case, therefore, to deny the application of the ordinary rule of presumption and to allow courses and distances to control.

**CARRIERS — BAGGAGE — LIABILITY FOR LOSS OF BAGGAGE CARRIED SUBSEQUENTLY TO PASSENGER'S JOURNEY.** — The plaintiff's baggage, due to her own delay, was delivered to the defendant carrier on the day following plaintiff's journey in person. The carrier took it on board his vessel and carried it to its destination. In an action for loss of part of the baggage, defendant set up the defense that he was liable only for negligence. *Held*, that the defense is valid. *Midgett v. Eastern Carolina Transportation Company*, 104 S. E. 32 (N. C.).